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Benjamin Weale in his own Right, *Lawrence Victorin* and *Francis Hayford*, *John Berdoe* and *Bearcroft Berdoe*, *Margaret Greaves*, Widow, and Executrix of *John Greaves*, deceas'd; *Thomas Hardwell*, *Abraham Rutland*, *Sherman Godfrey*, *Joseph North*, *Benjamin Weale*, and *James Pearce*, Executors of *John Pearce*, deceas'd; *Thomas White*, *Samuel Mascie*, and *Susannah* his Wife, which said *Thomas White*, and *Susannah Mascie*, are the Executors of *Richard Blincko*, deceas'd; *John Fell* the Elder, and *John Fell* the Younger, Executors of *John Rice*, deceas'd, } Appellants;

Catherine Morice, Widow and Executrix of *Humphry Morice*, Esq; deceased, *Ann Morice*, *Judith Morice*, and *Elizabeth Morice*, the Three surviving Children of the said *Humphry Morice*, Sir *Thomas Lee*, *Thomas*, *William*, and *Ann Lee*, *Ann Sandes*, *John Claxton*, *Sarah Claxton*, *Brown Claxton*, *Ann Colemore*, and others, } Respondents.

The Case of the said APPELLANTS.

The several Debts due to the Appellants from *Humphry Morice* at his Death, viz. 16 *Nov.* 1731.

THE said *Humphry Morrice* died on the 16th of *November* 1731, indebted 200,000 *l.* or thereabouts, particularly to the Appellant *Benjamin Weale*, in his own Right, the Sum of 1066 *l.* 17 *s.* 3 *d.* for Goods sold and delivered; And to the Appellants *Lawrence Victorin*, and *Francis Hayford*, in the Sum of 161 *l.* 14 *s.* for Goods sold and deliver'd; To the Appellants *John Berdoe*, and *Bearcroft Berdoe*, in the Sum of 208 *l.* 17 *s.* for Goods sold and deliver'd; To the Appellant *Margaret Greaves*, as Executrix of the said *John Greaves*, in the Sum of 835 *l.* 17 *s.* 9 *d.* for Work done and Materials found as a Shipwright; To the Appellant *Thomas Hardwell*, in the Sum of 1968 *l.* 18 *s.* 10 *d.* $\frac{1}{2}$, for Goods sold and Work done as a Gunsmith: To the Appellant *Abraham Rutland*, in the Sum of 117 *l.* for Goods sold and Work done as a Sail-maker; To the Appellant *Sherman Godfrey*, in the Sum of 80 *l.* 15 *s.* 6 *d.* for Goods sold and deliver'd; To the Appellant *Joseph North*, in the Sum of 526 *l.* for Goods sold and Work done as a Cooper; To the Appellants *Benjamin Weale* and *James Pearce*, as Executors of *John Pearce*, deceased, in the Sum of 717 *l.* for Gold and Elephants Teeth, consigned to the said *Humphry Morice*; To the Appellants *Thomas White* and *Susannah Mascie*, Executors of the said *Richard Blincko* deceased, in the Sum of 650 *l.* on a Promissory Note, Dated the 30th Day of *June* 1730; And to the Appellants *John Fell* the Elder, and *John Fell* the Younger, as Executors of the said *John Rice*, in the Sum of 349 *l.* 17 *s.* 4 *d.* for Goods sold and delivered.

The Respondent *Catherine Morice*, his Widow and Sole Executrix, proved his Will soon after his Death: And,

The Respondent *Catherine Morice*, his Widow and sole Executrix, proved his Will soon after his Death: And,

The Appellants Bill of Conformity, filed for an equal Administration of Assetts. 23d *Jan.* 1731.

SHE refusing to pay any of the said Debts, all the Appellants, or their Testators (except the Executors of the said *Richard Blincko*) on the 23d Day of *January* 1731, exhibited their Bill in the High Court of Chancery, on Behalf of themselves and the rest of the Creditors of the said *Humphry Morice*, against the said *Catherine Morice*, as Executrix of the said *Humphry Morice*; and also against *Humphry Morice*, his Heir at Law, and the Governor and Company of the Bank of *England*; praying that the said *Catherine Morice*, and *Humphry Morice*, might account for the Real and Personal Estate of the said *Humphry Morice* deceased, and that the said Real Estate might be sold, and that the said Governor and Company might shew Cause why an Uniform Decree should not be made for Satisfaction of all the Testator's Creditors out of the Real and Personal Estates, according to their several Degrees of Priority: And that all Creditors then standing in equal Degree should be paid in Proportion without any undue Preference to any Creditor; and that the said Governor and Company might be restrained from Proceeding at Law; To which Bill the Defendants, the Governor and Company of the Bank of *England*, put in a Demurrer, which Demurrer came on to be argued before the Lord Chancellor *King*, on the 14th Day of *June* 1732, when his Lordship was pleased to allow the said Demurrer, and the Appellants amended their Bill, and struck out the said Defendants the Governor and Company from being Parties, and made *Nicholas Morice*, *Ann Morice*, *Judith Morice*, and *Elizabeth Morice*, Children and Legatees of the said *Humphry Morrice*, Defendants; and thereby prayed that the Will of the said Testator *Humphry Morice*, might be proved *per Testes*, and that the Real Estate might be thereby well charged with the Payment of his Debts, or in Case the Court should adjudge the Testator's Real Estate not charged with the Payment of his Debts, the Plaintiffs might be Decreed to stand in the Place of the Specialty Creditors, and to have a Satisfaction out of the Testator's Real Estate *pro tanto*; and that there might be an Account of the Real and Personal Estate, and that the Real Estate might be sold for the Satisfaction of the Debts due to the Plaintiffs. To which amended Bill the Defendants put in their Answers, and the Defendant *Catherine* set forth her Marriage Settlement, and insisted on an Election, Whether she would abide by her Jointure, or take the Sum of 5000 *l.* in Lieu thereof, according to the Terms of the said Settlement: And the Bill was again amended, by adding more Plaintiffs, and on hearing the Cause on the 24th of *July* 1734, before his Honour the Master of the Rolls, his Honour was pleased to declare the Will of the said Testator *Humphry Morice*, to be well proved, and to Decree the Trusts thereof to be performed, and to refer it to the Master to take an Account of what is due to the Appellants, and all other the Creditors of the said *Humphry Morice*; and for that Purpose the said Master was to cause an Advertisement to be published in the *Gazette*, for the Creditors of the said *Humphry Morice*, who were not Parties to the said Suit, to come in and prove their Debts before him, and Decreed the said *Catherine Morice*, to come to an Account for the said *Humphry Morice*'s Personal Estate, and out of the said Personal Estate which the said Master should certify to come to the Hands of the said *Catherine Morice*, after all Allowances deducted, the Appellants and all other the Creditors of the said *Humphry Morice*, who should come in and prove their Debts before the said Master, were to receive a Satisfaction for their respective Debts in a Course of Administration; and the said Defendant was, when the Account should be taken, to make her Election before the Master, whether she would abide by her Jointure or take the Sum of 5000 *l.* in Lieu thereof, and in Case she should elect to take the said 5000 *l.* in Lieu of her Jointure, and it should appear that the said Testator's Personal Estate was not sufficient to pay his Debts, his Honour declaring that the Testator's Real Estate stood charged with the Payment thereof; *It was Ordered and Decreed*, That the said Defendant *Catherine Morice*, should come to an Account before the said Master, for the Rents and Profits of the said Testator's Real Estate, and that the Testator's Real Estate, or so much thereof as should be necessary to raise so much Money as the Testator's Personal Estate, and the Rents and Profits of his Real Estate should fall short of paying, be sold, and out of the Rents and Profits of the said Testator's Real Estate, which the said Master should certify to have come to the Hands of the said Defendant *Catherine Morice*, and the Money which should arise by such Sale, the Appellants and the Defendant Mrs. *Morice*, and all other the Creditors

of

of the ſaid Teſtator, who ſhould come in and prove their Debts before the ſaid Maſter, were to be paid ſo much as would make them up equal with what the Specialty and other Creditors of the ſaid Teſtator, who had gained a Priority on the ſaid Teſtator's Perſonal Eſtate, ſhould receive thereout, towards Satisfaction of their reſpective Debts, before they were to be admitted to receive any Thing out of the ſaid Rents and Profits, and Money which ſhould ariſe by the ſaid Sale, and then all the ſaid Teſtator's Creditors were thereout to receive a Satisfaction for their reſpective Debts *pari paſſu*. But in Caſe the Defendant Mrs. *Morice*, ſhould elect to abide by the ſaid Settlement, then the Lands compriſed therein were to be ſold for the Purpoſes aforeſaid, ſubject to her Eſtate for Life therein, and ſhe was not to Account for the Rents and Profits thereof received by her as aforeſaid.

The Appellants, or their Teſtators, before the Hearing of the ſaid Cauſe, had fully proved their ſaid ſeveral Debts to be juſtly due to them, and ſeveral other Creditors of the ſaid *Humphry Morice*, who were not Parties to the ſaid Suit, have proved their Debts before the ſaid Maſter, under the ſaid Decree.

The Appellants *Thomas White* and *Suſannah Maſcie* brought an Action, and in *Michaelmas* Term, 1733, recovered Judgment thereon, after a Writ of Enquiry of Damages, executed for 663 *l.* 16 *s.* 8 *d.* of the Goods and Chattels belonging to the ſaid *Humphry Morice* at his Death, and which ſhould after come to the Plaintiffs Hands, to be adminiſtred and to take Place after the Specialties and prior Judgments that had been obtained againſt the ſaid *Catherine Morice*; and the ſaid Judgment was ſigned on the 19th of *January* 1733.

Feb. 8, 1731. Mrs. *Morice* filed her Bill againſt the Appellants, and others, Creditors of her Huſband.

On the 8th of *February* 1731. the Reſpondent *Catherine Morice* exhibited her Bill in the Court of Chancery, (which was twice amended) and ſhe afterwards exhibited her Bill of Revivor and Supplemental Bill againſt the Appellants, and the ſaid *John Greaves* being then living, and againſt the Reſpondents *Ann*, *Judith*, and *Elizabeth Morice*, Sir *Thomas Lee*, *Thomas*, *William*, and *Ann Lee*, *Ann Sandes*, *John Claxton*, and *Sarah* his Wife, *Brown Claxton*, and *Ann Colemore*; and againſt ſeveral other Creditors of the ſaid *Humphry Morrice*; and thereby (amongſt other Things) alledged, That the Appellants and the ſaid *John Greaves*, and many others of the Defendants had Dealings with the ſaid *Humphry Morice*, and that the Accounts remained unſettled between him and them; on ſtating whereof, conſiderable Sums would appear to be owing to her; and that on the ſaid 25th of *January* 1731. a Decree was pronounced againſt her by his Honour the Maſter of the Rolls, for Payment, in a Courſe of Adminiſtration out of the Aſſetts of her Teſtator, of 16,500 *l.* principal Money, with 9163 *l.* 3 *s.* Intereſt; and 1622 *l.* 7 *s.* 3 *d.* Principal, with 91 *l.* 1 *s.* 6 *d.* Intereſt, to the Reſpondents *Ann*, *Judith*, and *Elizabeth Morrice*; and for Payment of 7400 *l.* Principal, with 263 *l.* Intereſt; and 1622 *l.* 7 *s.* 3 *d.* Principal, with 91 *l.* 1 *s.* 6 *d.* Intereſt, to the Reſpondents Sir *Thomas Lee*, *Thomas*, *William*, and *Ann Lee*, and for Payment of 5000 *l.* Principal, with 151 *l.* 14 *s.* Intereſt; and 7000 *l.* Principal, with 212 *l.* 7 *s.* Intereſt; and 4306 *l.* 11 *s.* 3 *d.* Principal, and 96 *l.* 10 *s.* 9 *d.* Intereſt, to the Reſpondents *John Claxton* and his Wife, and *Brown Claxton*, and for Payment of 3000 *l.* and 1622 *l.* 7 *s.* 3 *d.* both principal Sums, and 25 *l.* 19 *s.* 6 *d.* Intereſt, to the Reſpondent *Ann Sandes*; and that *Subſequent Intereſt* ſhould be carried on for all the ſaid principal Sums; and that in Obedience to that Decree, the ſaid *Catherine Morice* had, on the 4th of *February*, 1731. paid the Sum of 10,111 *l.* to the ſaid *Ann* and *Judith Morice*: And ſhe further alledged, That on the 2d of *February*, 1731. another Decree was pronounced by his Honour the Maſter of the Rolls; whereby (amongſt other Things) it was Decreed, That out of the ſaid Aſſetts ſhe ſhould purchaſe 862 *l.* 3 *s.* 6 *d.* *South-Sea* Stock, and 319 *l.* 13 *s.* *South-Sea* Annuity Stock, and lay out 104 *l.* 18 *s.* 2 *d.* in the Purchaſe of *South-Sea* Annuities; to be transferred to Truſtees, for the Benefit of the ſaid *Ann Colmore*: And that the Maſter to whom the ſaid Cauſe was referred, ſhould certify whether 500 *l.* *Eaſt-India* Stock, transferred to the ſaid *Humphry Morice* in Truſt, remained unaltered at his Death; and that on the 8th of the ſame *February* the ſaid Maſter made his Report, and certified, that the ſaid 500 *l.* *Eaſt-India* Stock remained unaltered; and that Half a Year's Dividend thereon was unreceived, and that ſeveral Sums were due for Intereſt and Dividends of the ſaid Stocks and Money, amounting to 47 *l.* 7 *s.* 6 *d.* And ſhe further alledged, That his Honour the Maſter of the Rolls, on the 9th of the ſame *February* had Decreed, That ſhe ſhould transferr the ſaid 500 *l.* *Eaſt-India* Stock to Truſtees, for the Benefit of the ſaid *Ann Colemore*, and pay the Half Year's Dividend due thereon, when received, and alſo the ſaid Sum of 47 *l.* 7 *s.* 6 *d.* out of the Aſſetts, in a Courſe of Adminiſtration. And by the ſaid Bills, amongſt other Things, ſhe prayed, That the Appellants and the ſaid *John Greaves*, and many others of the Defendants, might be reſtrained from proceeding at Law to recover the Aſſetts of the ſaid *Humphry Morice*; and that ſuch of the Defendants as were indebted to his Eſtate, might pay what was due to the ſaid *Catherine Morice*; and that what ſhould appear due to any of the Defendants, might be paid out of the ſaid Aſſetts of the ſaid *Humphry Morice*, ſo far as they would extend, in a Courſe of Adminiſtration; and that ſhe might be indemnified in paying Obedience to the ſaid Decrees. To which Bills the Appellants put in their ſeveral Anſwers, and thereby ſwore, That the ſaid *Humphry Morice* was, at the Time of his Death, indebted to the Appellants ſeverally, in the ſeveral Sums herein before, for that Purpoſe, ſet forth; and inſiſted, That the ſaid two Decrees were obtained by Colluſion between the ſaid *Catherine Morice* and the ſeveral Plaintiffs in ſuch Bills, and were contrived purely to give an undue Preference to the pretended Demands of the ſeveral Plaintiffs in ſuch Bills, to the juſt Debts of the Appellants, and other the ſimple Contract Creditors of the ſaid *Humphry Morice*, and the Appellants *Benjamin Weale*, *Lawrence Victorin*, and *Francis Hayford*, *John Berdoe*, and *Bearcroft Berdoe*, *John Greaves*, *Thomas Hardwell*, *Abraham Rutland*, *Sherman Godfrey*, *Joſeph North*, *Benjamin Weale*, and *James Pearce*, *John Fell* the Elder, and *John Fell* the Younger, by their ſaid Anſwers ſay, That they having made Application to the Plaintiff for Satisfaction of their ſaid ſeveral Demands; and not being able to procure the ſame, did, about *Michaelmas* Term, 1731. exhibit their Bill againſt the Plaintiff and others, in order to obtain Satisfaction for their ſaid ſeveral Demands, and the Plaintiff having appeared thereto and put in her Anſwer to the ſaid Bill, they hoped they ſhould be at Liberty to proceed therein.

Jan. 25, 1731. Decree at the Rolls in the Cauſe by Conſent, brought by Mr. *Morice*'s Children and Relations, againſt Mrs. *Morice*, for ſeveral principal Sums, making 48073 *l.* 13 *s.* and 10094 *l.* 17 *s.* 3 *d.* Intereſt, in all 58168 *l.* 10 *s.* 3 *d.* with ſubſequent Intereſt for the Principal till paid.

Feb. 2, 1731. Decree at the Rolls in the Cauſe by Conſent brought by Mrs. *Colemore*, againſt Mrs. *Morice*.

8*th Feb.* 1731. The Maſter's Report in *Colemore*'s Cauſe.

9*th Feb.* 1731. Decree on that Report.

Prayer of the Bill.

Appellants Anſwers to Mrs. *Morice*'s Original amended, and ſupplemental Bills.

The Appellants unacquainted with the Decrees at the Rolls, till Mrs. *Morice* filed her Bill.

The Appellants had not the leaſt Intimation of the ſaid Decrees of the 25th of *January* 1731, and 2d of *February* 1731, until the Reſpondent Mrs. *Morice* exhibited her ſaid Original Bill; but upon Enquiry into thoſe Proceedings, they found that the Bill of the ſaid Reſpondents *Ann*, *Judith*, and *Elizabeth Morice*, and others, was filed the 15th Day of *December* 1731, and amended in Purſuance of an Order of the 13th of *January* 1731, and on the 22d of the ſame *January* Mrs. *Morice* put in her Anſwer, (without being ſerved with Proceſs) and thereby admitted the ſame Sums to be due to them reſpectively, both for Principal and Intereſt, as were charged by the ſaid Bill, being upwards of 58,000 *l.* whereof above 10,000 *l.* was for Intereſt, after the Rate of 5 *l. per Cent.* computed to the Day of filing the Bill, without craving any Allowance or Deduction whatſoever, or deſiring any Account to be taken of what was due, and without being ſerved to hear Judgment, ſubmitted to a Decree for the Payment of ſaid Money on the 25th of *January* 1731, being the very Day on which ſhe made an Affidavit in the Court of Common Pleas (in order to get Time to plead to an Action brought againſt her by ſome of the ſaid *Humphry Morice*'s Creditors) of the Confuſion of her Teſtator's Affairs, and her Ignorance of his Debts, and the Nature of them: And after the Appellants Bill was filed againſt her, and the ſaid Decree was obtained upon the bare Admiſſion of the Reſpondent *Catherine Morice*, without any Proof; and the ſaid other Decree was obtained on the 2d of *February* 1731, upon the like Admiſſion of the Reſpondent Mrs. *Morice*, (who alſo put in her Anſwer to that Bill without being ſerved with Proceſs) and notwithſtanding the Appellants Bill was filed againſt her.

From the Filing the Bill but 12 Days to an abſolute Decree, for upwards of 58000 *l.* without any Account directed.

1ſt of *Auguſt* 1735. Decree at the Rolls in the Suit brought by Mrs. *Morice* againſt the Creditors.

The Anſwers of the Appellants and of the other Defendants, to the Reſpondent *Catherine Morice*'s Bill, being replied to, and Witneſſes examined, and Publication paſſed, the ſaid Cauſe came on to be heard before his Honour the Maſter of the Rolls, on the firſt Day of *Auguſt* 1735, who was pleaſed (amongſt other Things) *To Decree*, That the Defendants the Judgment Creditors, and the reſt of the Creditors, ſhould be enjoined from Proceeding at Law, for ſo much of the Aſſets as were recovered by the ſaid Decrees of the 25th of *January*, and 2d and 9th of *February* 1731. And as to the Reſpondents *Claxton* and his Wife (who claimed to be Creditors by Specialty) his Honour declared, That they were to be conſidered as Creditors by ſimple Contract, and to come in with the other Creditors in the ſaid Decree of the 25th of *January* 1731, and the Reſpondents the Bank of *England*, were to permit the Plaintiff to transfer the 3000 *l.* Bank Stock

Stock ſtanding in Mr. *Morice*'s Name, which was to be conſidered as his Aſſets, and the Dividends thereof due and to grow due, were to be laid out in the Name of the Accomptant General, in *South-Sea* Annuities, ſubject to further Order, and the Maſter was to take a mutual Account between the Reſpondent Mrs. *Morice*, as Executrix of the ſaid *Humphry Morice*, and the Defendants who had not obtained Judgments or Decrees, (except the Defendant *Goldham*, who diſclaimed) with uſual Directions; and what ſhould be found due from any of the Creditors to her, they were to pay to her; but what ſhould be found due to any of them, ſhe was to pay them out of the Aſſets. And his Honour declared, That the Reſpondent Mrs. *Morice*, could not have her Election, whether ſhe would abide by her Settlement, or take the Sum of 5000 *l.* reſerved to her in this Cauſe, as ſhe prayed by her Bill, and directed that the Money which had been paid into the Bank (purſuant to the ſeveral Orders before mentioned) ſhould be laid out in *South-Sea* Annuities in the Name of the Accomptant General, ſubject to further Order; and all Parties were to be paid their Coſts, to be taxed by the Maſter, out of the ſaid Teſtator's Eſtate.

The Appellants having appealed from the ſaid Decree to the Right Honourable the late Lord High Chancellor, the ſaid Cauſe was heard on their Appeal, and alſo on the Appeals of ſeveral others of the now Reſpondents; and on the 6th of *November* laſt his Lordſhip "*decreed an Account of what was due to the ſeveral Creditors by Decrees and Judgments, on "their Decrees and Judgments, (except the ſaid Defendant* Coldham, *who diſclaimed the Judgment obtained in his "Name) and alſo of what was due to the other Creditors, who had not obtained Decrees or Judgments: But in taking the "Account of what was due to the ſaid* Ann *and* Judith Morice, *under the ſaid Decree of the 25th of* January, 1731. *the Maſter "was to enquire what was reaſonable to be allowed to their Father the ſaid* Humphry Morice, *for their Maintenance, from the "Times they reſpectively attained the Age of Twenty-one Years, to his Death; and to deduct the ſame out of what ſhould "be found due to them: And the Maſter was to take an Account of the Perſonal Eſtate of the ſaid* Humphry Morice *come "to the Plantiffs Hands or Uſe; and the ſame, together with what ſhould be received by her, or for her Uſe, was to be ap-"ply'd,* in the firſt Place, *to pay what ſhould be found due to the ſeveral Plantiffs, under the ſaid Decree of the 25th of "*January, 1731. *and then to pay what ſhould be found due to the Plantiffs under the ſaid Decrees of the 2d and 9th of "*February, 1731. *according to the ſaid Decrees: And his Lordſhip declared, that the* 500 l. Eaſt India *Stock, mentioned "in the ſaid Decrees of the 2d and 9th of* February, 1731. *and the Dividends received for the ſame, ſince the Death of "the ſaid* Humphry Morice, *ought not to be conſidered as Part of his Aſſetts, he being only a Truſtee thereof:* And ordered, "*That after Payment of what ſhould be found due on the ſaid Decrees, the Reſidue of the Aſſetts ſhould be apply'd to "the Payment of the ſeveral Judgments, and what was due on the Decree in the Cauſe, wherein the Defendants* Weale "*and others were Plantiffs, according to their reſpective Priorities: And if any Thing ſhould remain then to the Payment "of the other Creditors, in a Courſe of Adminiſtration; and the Bank was to permit the Plantiff to transfer the ſaid* 3000 l. "Bank *Stock; and the Dividends thereof were to be laid out in* South-Sea *Annuities, in the Name of the Accomptant-"General, ſubject to further Order, with uſual Directions for taking the ſaid Account: And his Lordſhip declared, that "the Plantiff could not have her Election in this Cauſe, whether to abide by her Settlement, or to take the* 5000 l. *thereby "reſerved to her; and ordered, That the Money which had been paid into the Bank, ſhould be laid out in* South-Sea *Annuities, "in the Name of the Accomptant-General, ſubject to further Order; and the ſeveral Defendants, who had obtained Judg-"ments, or who had not any Judgment or Decree, were enjoyned from proceeding at Law againſt the Plantiff, for the "Recovery of their reſpective Debts; and all Parties were at Liberty to apply for further Directions, and were to be paid "their Coſts to be taxed, out of the ſaid Teſtator's Eſtate.*

6th of *Nov.* 1736. Lord Chancellor's Decree upon the Appeal.

The Decree obtained by *Ann* and *Judith Morice*, varied; and an Account directed touching what was to be allowed for their Maintenance.

The Plaintiffs in the Decree of the 25th of *Jan.* 1731. to be paid in the firſt Place.

Then the Plaintiffs in the Decrees of the 2d and 9th of *Feb.* 1731.

By which Decree, the Appellants apprehend themſelves to be aggrieved, and have appealed to your Lordſhips therefrom, and humbly hope the ſame ſhall be reverſed for the following (amongſt other) Reaſons:

I. For that at the Death of the ſaid *Humphry Morice*, all the Creditors ſtood in the ſame Degree, as to their ſeveral Demands upon his Eſtate; and no one, either of the Appellants or Reſpondents, had at that Time any Priority of Claim upon the Aſſetts which he left; and as it is agreed on all Hands, that the Teſtator's Debts are near 100,000 *l.* more than his Effects will anſwer to pay, it ſeems highly reaſonable that the Loſs ſhould fall equally on all the Creditors, in Proportion to their Debts, and not that a few ſhould receive their whole Demands, and the reſt looſe the Whole; which, according to the preſent Decree, will be the Caſe.

II. For that the ancient Practice of the Courts of Equity hath, as the Appellants are adviſed, been agreeable to what is now deſired; and Bills of Conformity, as they were called, were allowed of, to compell Creditors, in Caſes of this Sort, to conform all to one Rule, and receive a rateable or proportionable Satisfaction for their ſeveral Debts, where the Aſſetts would not extend to make full Satisfaction to all; and in the preſent unfortunate Caſe, the Appellants, before any Decree or Judgment obtained by any of the Parties in this Cauſe, did on the 23d of *January*, 1731. file a Bill in the Court of Chancery, on Behalf of themſelves and the reſt of the Creditors of *Humphry Morice*, praying that they might all be paid in Proportion, out of the Aſſetts; and that no one Creditor, or Set of Creditors might be preferred before the reſt, but a Demurrer was allowed to that Bill as improper, the Practice of the Courts of Equity of late Years not having encouraged ſuch Bills: But the Appellants humbly apprehend, that ſuch a Bill was proper, as being the only Method that could be followed to do equal Juſtice to all the Creditors.

III. For that Mrs. *Morice* the Executrix, by her Bill in this Cauſe, ſeeks to protect herſelf by the Decree of a Court of Equity, in what ſhe has done, contrary to all Rules of Equity; and the ſame, as the Appellants are adviſed, ought not to have been retained upon any other Foundation, than in order to oblige her to conform to thoſe Rules: For if that Maxim is right, that *Equality is Equity*, then an Executrix, who ſees and knows, that the Fund for the Payment of the Teſtator's Debts will be very deficient, and therefore gives a Preference to ſome Creditors to receive their whole Demands, by which Means others muſt looſe all their Debts, ſeems to have no Right to ask the Aid of a Court of Equity to protect her in ſuch Partiality.

The Appellants therefore humbly hope, that the ſaid Decree of the 6th of November, 1736, *ſhall be reverſed, and that all the Creditors (as they were all in equal Degree at the Time of the Death of the Teſtator, and at the Time of filing the Appellants Bill of Conformity, and even at the Time of the firſt Decree that was obtained againſt the Executrix) ſhall be paid in Proportion.*

C. CLARKE.
WILLIAM MONCK.

Benjamin Weale in his own Right, *Lawrence Victorin* and *Francis Hayford*, *John Berdoe* and *Bearcroft Berdoe*, *Margaret Greaves*, Widow, and Executrix of *John Greaves*, deceas'd; *Thomas Hardwell*, *Abraham Rutland*, *Sherman Godfrey*, *Joseph North*, *Benjamin Weale*, and *James Pearce*, Executors of *John Pearce*, deceas'd; *Thomas White*, *Samuel Mascie*, and *Susannah* his Wife, which said *Thomas White*, and *Susannah Mascie*, are the Executors of *Richard Blincko*, deceas'd; *John Fell* the Elder, and *John Fell* the Younger, Executors of *John Rice*, deceas'd. } Appellants.

Catherine Morice, Widow and Executrix of *Humphry Morice*, Esq; deceased; *Anne Morice*, *Judith Morice*, and *Elizabeth Morice*, three of the Children of the said *Humphry Morice* deceased; Sir *Thomas Lee*, *Thomas*, *William* and *Anne Lee*, *Anne Sandes*, *John Claxton*, *Sarah Claxton*, *Brown Claxton*, *Anne Colemore*, and others, - } Respondents.

The CASE of the said Appellants.

To be heard at the Bar of the House of Lords, on *Thursday* the 28*th* Day of *April*, 1737.